



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

RONALD DE'RAY SKIPPER,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS et al.,

Defendants.

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CIVIL ACTION NO. 4:05-3024-HFF-TER

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE

This case was filed as a civil rights action. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Defendants' Motion for Summary Judgment be granted and that the action be dismissed *without prejudice* for Plaintiff's failure to exhaust his administrative remedies. In the alternative, the Magistrate Judge recommends that Defendants' Motion for Summary Judgment be granted as to Defendant SCDC and Defendants Ozmint, Coleman and Tartarsky in their official capacities in light of Eleventh Amendment immunity and denied without prejudice as to Defendants Ozmint, Coleman and Tartarsky in their individual capacities, allowing them thirty days to file for summary judgment as to the merits of Plaintiff's claims against them in

their individual capacities. The Report is made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on February 22, 2007, and the Deputy Clerk of Court entered Plaintiff's objections on March 12, 2007. The Court has carefully considered Plaintiff's objections. Although it appears to the Court that Plaintiff may have failed to exhaust his administrative remedies, in an abundance of caution, the Court will not dismiss the action on that basis. Instead, for the reasons set forth in the Report, the Court will follow the Magistrate Judge's alternative suggestion.

Accordingly, after a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Plaintiff's objections, adopts the Report to the extent that it does not contradict this Order, and incorporates it herein. Therefore, it is the judgment of this Court that Defendants' Motion for Summary Judgment be **GRANTED** as to Defendant SCDC and Defendants Ozmint, Coleman and Tartarsky in their official capacities in light of Eleventh Amendment immunity and **DENIED** without prejudice as to Defendants Ozmint, Coleman and Tartarsky in their individual capacities. Defendants shall have thirty days from the filing of this

Order to file any dispositive motions as to the merits of Plaintiff's claims against them in their individual capacities.

IT IS SO ORDERED.

Signed this 14th day of March, 2007, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified of the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.